IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Bail Appl..No. 4238 of 2007()

CP.33/2007 of J.M.F.C.-II, KOLLAM
CRIME NO.332/2000 OF KOLLAM EAST POLICE STATION

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PETITIONERS/ACCUSED NOS. A1 A4,A6,A9,A10 & A11.

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1. BINU -(AI)
   S/O.GANGADHARAN,
   THIRUKANIKKAN VEETTIL,
   AAKKOLIL CHERRY,ERAVIPURAM VILLAGE,
   KOLLAM.

2. SUNIL KUMAR -(A4)
   S/O.SUNDARESAN,
   THODIYIL VEETTIL,
   VADAKKUMBHAGAM CHERRY,ERAVIPURAM VILLAGE.

3. BIJU -(A6)
   S/O.GANGADHARAN,
   THIRUKANIKKAN VEETTIL,ASKKOLICHERRY,ERAVIPURAM
   VILLAGE, KOLLAM.

4. SABU @ SHAJUMON -(A10)
   S/O.SHANMUGHAN,
   LAKSHAMVEEDU COLONY,
   VADAKKUMBHAGAMCHERRY,
   ERAVIPURAM VILLAGE,KOLLAM.

5. RAJU.R. (A9)
   S/O.GOPALAKRISHNAN, ATTUKAL PUTHUVALPUAYIDAM,
   VADAKKUMBHAGAM CHERRY, ERAVIPURAM VILLAGE,KOLLAM.

6. ARAVINDAKSHAN -(A11)
   S/O.ANANDAHAN,LAKSHMVEEDU COLONY,
   VADAKKUMBHAGAM CHERRY,ERAVIPURAM VILLAGE,KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,KOLLAM EAST,
   KOLLAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4238 OF 2007

Dated this the 25th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations in a crime registered in 2000. The offences alleged include the offence punishable under Sec.307 read with Sec.149 of the IPC. On account of prior animosity, the de facto complainant is alleged to have been attacked with a dangerous weapon – sword. Investigation is complete. Final report has already been filed. Committal proceedings are pending. The petitioners were not available for arrest in the course of investigation.

2. Cognizance having been taken by the committal court and the petitioners having not appeared, warrants of arrest are pending against the petitioners. They pray that directions under Sec.438 of the Cr.P.C. may be issued in their favour. The incident occurred consequent to a dispute regarding the

conduct of the students using a ground as their play ground, it is submitted.

3. The learned Public Prosecutor opposes the application. The nature of the weapon and the nature of the injury suffered by the victim do not justify the invocation of the equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor. To verify the correctness of the contention that the allegation under Sec.307 of the IPC has been unnecessarily included, the learned Public Prosecutor was requested to produce the Case Diary and take this Court through the nature of the injury suffered. The injury in the wound certificate has been read over to me. It is a 6 x 1 cms. bone deep injury on the vertex.

4. Having considered all the relevant inputs, I am not persuaded to agree that this is a fit case where the discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioners. This is a fit case where the petitioners must appear before the learned Magistrate and seek regular bail in the normal and ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the

learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge